

## COMMENTS OF THE GAS OPERATORS

D.T.E. 06-48

### I. INTRODUCTION

On May 19, 2006, the Department of Telecommunications and Energy (the "Department") opened an investigation into compliance with the gate box maintenance and improvement requirements of G.L. c. 164, § 116B ("Section 116B"), by gas companies and municipal gas departments (the "Gas Operators").<sup>1</sup> In its order opening the investigation (the "NOI"), the Department stated that there are differences in how operators comply with the requirements of Section 116B and, more specifically, there are differences in how operators define the term "easily and immediately accessible" and in "policies to collect necessary information from municipalities as to road paving schedule" (NOI at 2-3). The Department stated that, accordingly, its investigation is designed to "establish standards by which operators comply with the Section 116B mandates" and that the investigation will "seek a showing on the part of operators that issues of gate box maintenance and improvement are properly addressed" (*id.* at 3).

As discussed in detail below, the Gas Operators are in full compliance with the requirements of Section 116B and appreciate the opportunity to inform the Department of their compliance programs. However, as discussed in detail below, the central issue in this proceeding actually revolves around the question of whether, in ensuring that gate box maintenance and improvement issues are "properly addressed," the

---

<sup>1</sup> For the purposes of this filing, the Gas Operators are: Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Fitchburg Gas and Electric Light Company d/b/a Unitil; Holyoke Gas and Electric Department, KeySpan Energy Delivery-New England, Middleborough Gas and Electric Department, New England Gas Company, NSTAR Gas Company, Wakefield Municipal Gas and Light Department and Westfield Gas and Electric Light Department.

Department may be requiring gas operators to initiate efforts to complete gatebox improvements beyond the requirements of Section 116B, as well as existing state and federal regulation.

To date, the Department's instructions regarding Section 116B compliance have been based on the interpretation and juxtaposition of various state and federal pipeline safety regulations in combination with the requirements of Section 116B. In that regard, Section 116B provides that:

*[w]henver the commonwealth or a city or town undertakes the repair of streets, roads or sidewalks, the appropriate gas company shall provide for the maintenance and improvements of its gate boxes located in the streets, roads or sidewalks to be repaired, so that the gate boxes are more easily and immediately accessible. A gas company may apply for funds under chapter 90 to assist in paying the costs of the maintenance and improvements.*

(emphasis added). Therefore, Section 116B specifically and exclusively requires each gas operator to: (1) perform maintenance and improvements of its gate boxes *located in the streets, roads or sidewalks to be repaired*; (2) *at the time* that the commonwealth or a city or town undertakes the repair of those streets, roads or sidewalks; (3) *so that* the gate boxes are more easily and immediately accessible.

Since the enactment of Section 116B in 2003, the Department's Pipeline Engineering & Safety Division (the "Pipeline Division") has issued several communications to the operators interpreting its terms and discussing operator compliance requirements. These communications have cited to various state and federal regulations to define the terms "gate box" and "easily and immediately accessible," which are used in Section 116B. Although it is not clear, the Pipeline Division seems to imply that Section 116B requires gas operators to ensure that all

“gate boxes” (as defined by the Department) remain “easily and immediately accessible,” *whether or not* the operator is afforded a reasonable opportunity to maintain its gate boxes during a municipal paving project. This concept is echoed by commenters in this proceeding. However, this approach would create a substantial concern for the Gas Operators because, as in the past, an operator’s success in protecting the accessibility of gate boxes installed on its system is dependent upon the cooperation and responsiveness of state and municipal paving authorities controlling and scheduling public-works projects.

As discussed in detail below, the Gas Operators comply with all state and federal safety requirements for the installation and maintenance of valves and valve boxes on distribution mains and service lines.<sup>2</sup> In accordance with those requirements, underground valve boxes are accessible at the time of installation. Following installation, the Gas Operators protect the accessibility of their valve boxes by raising any valve boxes affected by municipal paving projects when they have been afforded a reasonable opportunity to participate in those projects. To attempt to ensure participation, the Gas Operators actively solicit information on planned municipal paving projects and cultivate working relationships with communities located within their service territories in order to identify and plan for upcoming municipal paving projects.

Significantly, Section 116B imposes no requirement for operator notification by a municipality undertaking a paving project, nor is there any provision of Section 116B that would prohibit a municipality or its paving contractor from damaging or covering over utility facilities. In addition, the enactment of Section 116B has not created a new

---

<sup>2</sup> As explained in Section III.A (*infra*), the terms “valve box” and “gate box” are interchangeable.

requirement or expanded an operator's obligations to ensure that gate boxes are easily and immediately accessible outside of the context of a municipal paving project or in the event that it is not provided with a reasonable opportunity to participate in a municipal paving project.. Therefore, the issue is whether a municipal paving project has been undertaken by the state or a city or town with notice, or in some cases with sufficient notice, to provide an opportunity for the operator's participation.

Consequently, the Department's stated objectives in this proceeding raise the question of whether the Department is: (1) seeking to establish standardized practices to facilitate comprehensive and consistent statewide compliance with Section 116B *by operators and municipalities undertaking paving projects*; or (2) seeking to ensure that gate box issues are "properly addressed" by having the Gas Operators initiate a new program to inspect and maintain "gate boxes" and to remove paving at their own initiative (rather than that of the municipality), in order to ensure that all "gate boxes" are "easily and immediately accessible" at all times. For the reasons discussed below, the Gas Operators believe that the mandate encompassed in Section 116B provides a reasonable and effective platform for gate-box maintenance and improvement and that continuing compliance with Section 116B will enable the Gas Operators to meet the Department's important public safety objectives.

These comments are organized as follows: Section II reviews the procedural status of the proceeding. Section III outlines the federal and state pipeline safety regulations that relate to the installation and maintenance of valve boxes on the distribution system and discusses the obligations that those requirements pose for operators in the context of Section 116B. In Section IV, the Gas Operators respond to

the specific recommendations submitted by commenters in this proceeding. In Section V, the Gas Operators propose a set of standards governing compliance with Section 116B, including uniform communication protocols to increase opportunities to improve and maintain gate boxes are maximized at the time that street, roadway and sidewalk paving projects are undertaken by the Commonwealth and cities and towns therein. Section VI contains a summary of the recommendations of the Gas Operators.

## **II. PROCEDURAL STATUS**

As noted above, the Department issued its NOI on May 19, 2006. In the NOI, the Department directed operators to file information regarding: (1) the relevant portion of the operator's operations and maintenance ("O&M") plan that ensures compliance with Section 116B; (2) an excel spreadsheet of service territory streets that were paved in 2005, and the date that the gate boxes were made "easily and immediately accessible"; (3) the relevant portion of the operator's O&M plan that delineates policies concerning how its employees collect data to ensure compliance with Section 116B; (4) all relevant evidence that operators are in compliance with Section 116B; and (5) all relevant evidence that demonstrates that all valves on its mains and all curb valves on its service lines are immediately and readily accessible (NOI at 3-4).<sup>3</sup> The Gas Operators filed this information with the Department on June 6, 2006.

On June 15, 2006, the Department held a procedural conference and public hearing in this proceeding. At the public hearing, the New England Gas Workers Association ("NEGWA") submitted both oral and written comments. At the hearing, the

---

<sup>3</sup> The Department noted that requirements applicable to valves on mains are described in 49 C.F.R. Part 192 ("Part 192"), § 192.181 and that requirements for service line valves are described in Part 192, § 192.365 and in 220 C.M.R. § 101.06(4).

Department noted that it would accept written comments on its NOI from interested persons through June 29, 2006 and directed the operators to file comments in response by July 21, 2006 (Tr. 1, at 13-14). On June 29, 2006, written comments were submitted by the Office of the Attorney General (the "Attorney General Comments") and the Town of Canton (the "Canton Comments"). The Town of Concord submitted written comments on July 5, 2006 (the "Concord Comments"). The Gas Operators respond below to each of the comments submitted to the Department to date.

### **III. LEGAL FRAMEWORK GOVERNING GATE BOX ACCESSIBILITY**

#### **A. Introduction**

Because the Department has relied on the interpretation of state and federal pipeline requirements to define terms used in Section 116B, an understanding of the extent and interrelation of state and federal regulation is essential to the analysis of an operator's compliance with Section 116B. In that regard, there are two initial points that relate to the legal framework governing "gate box" accessibility.

First, in its communications with gas operators, the Pipeline Division has cited to a number of state and federal regulations relating to valve equipment installed on the distribution systems that the Gas Operators own and maintain for the purpose of providing service to customers. The regulations cited by the Pipeline Division are part of a comprehensive pipeline safety regimen that is established primarily, but not exclusively, by the Pipeline Hazardous Materials Safety Administration ("PHMSA") within the U.S. Department of Transportation ("USDOT"), with enforcement delegated to the Department. Because the USDOT regulations apply nationwide, state jurisdictions often encounter similar issues in the course of operating their respective systems. As a

result, a generally accepted application of the federal requirement and/or standard industry practice may develop over time, which can provide important guidance in terms of understanding mandated operating requirements in relation to specific provisions of the federal code. This is the case with “gate box” installation and maintenance. Accordingly, in resolving issues in this case, it is appropriate to give some consideration to the way in which the USDOT has interpreted its own regulations.

Second, the terminology used to discuss valve and valve box requirements is important. Gas operators install valves throughout the distribution system to control the flow of gas in particular areas of its system. Valves are installed on both distribution mains and service lines. On *distribution mains*, there are two principal types of valves: (1) “key valves,”<sup>4</sup> which are required by federal law and are specifically designated by the respective operators to allow for emergency shutoffs; and (2) non-required distribution valves, which are installed at the election of the operator to support construction and maintenance activities. Underground valves installed on *service lines* are commonly referred to as “curb valves.” Any valve that is installed on the underground distribution system is housed by a “valve box” or “gate box” (the terms are used interchangeably), which provides access to the valve and protects the valve from mechanical damage, the effects of weather and other types of encroachment.

Although Section 116B does not define the term “gate box,” the Gas Operators employ a practice of inspecting and maintaining all valves housed by a gate box and affected by a municipal paving project (whether a distribution main valve or a curb

---

<sup>4</sup> In Massachusetts, the Gas Operators refer to these valves as “primary” or “critical” valves in their O&M procedures. The term “key valve” is a term that is frequently used by PHMSA in discussing the applicable federal safety requirements.

valve). Therefore, the resolution of the issues in this proceeding does not necessarily hinge on the definition of "gate box," since all types of affected gate boxes are raised by the Gas Operators when they are participating in a municipal paving project, so that those gate boxes will continue to be "easily and immediately accessible," as required by Section 116B.

However, to the extent that the Department were to decide to establish a new and broader standard requiring gate boxes to be made "easily and immediately accessible" outside of the context of a state or municipal paving project, it will need to consider that, although all underground valves are housed by a "valve box," not all valves that may be located on a distribution system are required to be installed by state and/or federal law, nor do all valves have the same importance or benefit in an emergency. Therefore, the Department would need to conduct further examination beyond the scope of this (generic) proceeding into the particular use of valves on each distribution system, the potential for municipal cooperation in allowing the excavation of paved-over valve boxes outside of an ongoing paving project, and the cost-effectiveness of efforts to ensure that valves other than the "key" or "critical" valves are "easily and immediately accessible" on that system.

#### **B. Federal Regulations (42 C.F.R. Part 192)**

Part 192 of the Code of Federal Regulations ("CFR") establishes the federal safety standards for the transportation of natural gas by pipeline. Part 192 does not include any reference to the term "gate box," nor does it set requirements for "gate box" accessibility following the initial installation. Instead, Part 192 establishes requirements

governing the **installation** of valves on: (1) “distribution lines;”<sup>5</sup> (2) “service lines,”<sup>6</sup> and (3) “transmission lines.”<sup>7</sup> See Part 192, §§ 192.141 (Scope of Subpart D – Design of Pipeline Components) and 192.351 (Scope of Subpart H -- Customer Meters, Service Regulators, and Service Lines). Thus, the requirements for the valve box housing and accessibility differ depending on the type of valve to be installed.

1. Valve Accessibility on Distribution Lines Under Federal Regulation

The Department has specifically and repeatedly cited to Part 192, § 192.181 (“Section 192.181”) and a related 1973 Opinion Letter of the USDOT Office of Pipeline Safety (“OPS”) (the predecessor to PHMSA) as the basis for its determination regarding the accessibility of distribution main valves. See, Department Letter to Operators re: Distribution Line Valves (October 3, 2005); Department Letter to Operators re: Distribution Line Valves (September 18, 2003). Section 192.181 is set forth in Subpart D of Part 192, which governs the installation of pipeline equipment and is entitled “Design of Pipeline Components.” The scope of Part 192, Subpart D, is as follows:

[Subpart D] prescribes minimum requirements of the **design and installation** of pipeline components and facilities. In addition, it prescribes requirements relating to protection against accidental overpressuring.

Part 192, Subpart D, § 192.141 (emphasis added).

---

<sup>5</sup> A “distribution line” is defined as “a pipeline other than a gathering or transmission line.” Part 192 § 192.3.

<sup>6</sup> A “service line” is defined as “a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer’s piping, whichever is further downstream, or at the connection to customer piping if there is no meter.” Part 192, § 192.3.

<sup>7</sup> A “transmission line” is defined as “a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a gas distribution center, storage facility, or large volume customer that is not down-stream from a gas distribution center; a pipeline that operates at a hoop stress of 20 percent or more of [specified minimum yield strength]; or a pipeline that transports gas within a storage field.” Part 192, § 192.3.

Within Subpart D, Section 192.181, which is cited by the Pipeline Division, provides that:

- (a) Each **high-pressure** distribution system must have valves spaced so as to reduce the time to shut down **a section of main** in an emergency. The valve spacing is determined by **the operating pressure, the size of the mains, and the local physical conditions**.
- (b) Each regulator station controlling the flow or pressure of gas in a distribution system must have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit the operation of the valve during an emergency that might preclude access to the station.
- (c) Each valve on a main installed for operating or emergency purposes must comply with the following:
  - (1) The valve must be placed in a readily accessible location so as to facilitate its operation in an emergency;
  - (2) The operating stem or mechanism must be readily accessible;
  - (3) If the valve is installed in a buried box or enclosure, the box or enclosure must be installed so as to avoid transmitting external loads to the main.

(emphasis added). Accordingly, the scope of Section 192.181 is limited in two ways:

(1) the section sets requirements for the installation of certain distribution valves; and

(2) the type of valves to which the requirement applies are “key” valves on a distribution main, as designated by the operator based on the operating pressure, the size of the mains, and the local physical conditions. Accordingly, this provision requires each operator to install an appropriate number of valves on its distribution mains to be designated as “key” operating valves and to ensure that, *at the time of installation*, those valves are placed in a “readily accessible location” so as to allow for “sectionalization” of the distribution main in an emergency. This provision does not apply to all valves that are installed on the main by an operator and, although other valves may facilitate the control of gas flow, those valves are not required or necessary for emergency operating purposes. Section 192.181 imposes no requirement for the accessibility of distribution

valves other than those valves designated as “key” valves and imposes no requirement for inspection and maintenance following the installation of those valves. Post-installation maintenance of a “key” valve is covered under a separate subsection of Part 192.

Specifically, the requirements for “Maintenance” of a natural gas pipeline are set forth under Subpart M. The only requirement in Subpart M pertaining to the maintenance of underground valves is Section 192.747, which governs the maintenance of “key” valves on a distribution system. Section 192.747 states in its entirety:

(a) Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year.

(b) Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve.

In accordance with this provision (and Section 192.181 governing installation), all of the Gas Operators have comprehensive procedures in place to (1) designate an appropriate number of “key” operating valves on their systems, (2) to inspect those valves on an annual basis, and (3) to make sure that those valves are “readily accessible,” (i.e. are not paved over). As the Pipeline Division is aware, these procedures are well established and are explicit components of the O&M manuals of the Gas Operators.<sup>8</sup> In addition, the Pipeline Division has actively monitored and enforced these provisions.

---

<sup>8</sup> For example, see, Bay State Gas Company (O&M Manual at Section 4.17), The Berkshire Gas Company (O&M Manual at Section 5.1.2.9), Blackstone Gas Company, Holyoke Gas and Electric Department (O&M Manual at Section 12.6), KeySpan Energy Delivery-New England (O&M Manual at VSUR 5010), Middleborough Gas and Electric Department (O&M Manual at Section 1000.030), New England Gas Company (O&M Manual at Section CM26), NSTAR Gas Company (O&M Manual at Section 4.6.6); Unitil (O&M Manual at Section 2.19.00).

In the past, operators subject to the USDOT requirements have solicited rulings from PHMSA/OPS to confirm that Sections 192.181 and 192.747 establish installation and maintenance requirements for “key” valves, but not for other valves that may be installed on the distribution system at the discretion of the operator for purposes such as facilitating future construction or routine maintenance activities. These requests have also asked for a determination of whether annual inspections are required to ensure that distribution valves other than “key valves” are “readily accessible.” Although these rulings are not binding on operators (and are often somewhat fact-specific), they do provide guidance on the interpretation of federal pipeline safety standards by the entity promulgating those standards. For the purposes of this proceeding, the Gas Operators have attached the following appendices to support this discussion:

- Appendix 1: OPS Interpretation of Title 49 CFR 192.181 and 192.747 (Sept. 1979)
- Appendix 2: OPS Interpretation of Title 49 CFR 192.181 and 192.747 (Aug. 1980)
- Appendix 3: OPS Interpretation of Title 49 CFR 192.181 (Sept. 2003)

In these rulings, the OPS has indicated that:

- (a) Section 192.181 prescribes design standards for the installation of “key valves” in pipeline systems (App. 1 at 1).
- (b) Section 192.181 addresses “does not require an operator to maintain all valves in accordance with § 192.747” (App. 3 at 3).
- (c) Section 192.181 does not require an operator to maintain every valve installed on a gas system as “readily accessible” in accordance with § 192.747 (App. 1 at 3).
- (d) Section 192.747 does not specify how many valves are necessary for the safe operation of a distribution system (App. 1 at 1).
- (e) “Key valves” referred to in Section 192.747 are those necessary for the “sectionalizing” of the distribution system so that an operator can isolate a particular section of the system in an emergency (App. 2 at 2).

- (f) A curb valve could only be used to isolate the service line in which it is installed. Therefore, it could not be considered as being capable of sectionalizing the distribution system and, because of this limitation, would not be considered under Section 192.747 as being necessary for the safe operation of a distribution system (App. 2 at 3).

Accordingly, Section 192.181 and the related 1973 OPS Opinion Letter, provide guidance only to the extent that a valve is designated as a “key” valve. In Massachusetts, all valves designated as a “key” valve are inspected and maintained annually to ensure that those valves are easily and immediately accessible. As demonstrated above, OPS has not concluded that the provisions of Sections 192.181 (installation) and 192.747 (maintenance) dictate that the standard of “readily accessible” is applicable to all other valves located on the distribution system.

## 2. Valve Accessibility on Service Lines Under Federal Regulation

The Pipeline Division has also cited Part 192, § 192.365 (“Section 192.365”) as the basis for its determination regarding the accessibility of service line or “curb” valves. Department Letter to Operators re: Underground Service Line Valves (“Curb Valves”) (September 18, 2003). The provisions of Part 192 governing valve accessibility on service lines are found in Subpart H, entitled “Customer Meters, Service Regulators, and Service Lines.” Section 192.365, in its entirety, provides that:

- (a) *Relation to regulator or meter.* Each service-line valve must be installed upstream of the regulator or, if there is no regulator, upstream of the meter.
- (b) *Outside valves.* **Each service line must have a shut-off valve in a readily accessible location** that, **if feasible**, is outside of the building.
- (c) *Underground valves.* **Each underground service-line valve must be located in a covered durable curb box** or standpipe that allows ready operation of the valve and is supported independently of the service lines.

(emphasis added). The scope of Section 192.365, as defined in Part 192, Subpart H, is as follows:

[Subpart H] prescribes minimum requirements for **installing** customer meters, service regulators, service lines, service line valves, and service line connections to mains.

(emphasis added). Part 192, Subpart H, § 192.351.

Accordingly, Section 192.365 has a parallel structure to Section 192.181, which means that its requirements are limited to the installation of service or “curb” valves, and not the maintenance of service valves that are already installed. In Massachusetts, all underground curb valves are readily accessible at the time of installation. Section 192.365 imposes no requirement for the inspection, maintenance or accessibility of an underground service line valve following installation.

### **C. Valve Accessibility on Service Lines Under State Regulation**

As provided by federal law, the Department enforces the minimum federal safety standards set forth in Part 192 and, in addition, has authority under state law (G.L. c. 164, 105A) to regulate and control the storage, transportation and distribution of natural gas. However, the only state regulation that pertains to the accessibility of service line valves is 220 CMR 101.06(14), which is cited by the Department in support of the proposition that the term “gate box” used in Section 116B encompasses “curb valves” on service lines and that curb valves should be “easily and immediately accessible.” This regulation states, in its entirety:

Service Lines – Location of Valves. (Section 192.365 MFS Standards). All intermediate and high pressure services and all services two inches in diameter or larger shall be equipped with an underground curb shut off located in proximity to the property line except that whenever gas is supplied to a theatre, church, school, factory or other buildings where large numbers of persons assemble, an outside shut off in such case will be required regardless of the size of the service or of the service pressure. All underground curb shut offs shall be **readily identifiable and available for easy access** by gas company personnel.

220 CMR 101.06(14) (emphasis added). Section 101.06 of the CMR is entitled “Additional Rules or Modifications” and each provision cross-references the federal regulation that it is adding to or modifying. This particular provision governs the “Location of Valves” and specifically cross-references to Section 192.365 (the federal requirement for service-line installation). Therefore, like Section 192.365, the state requirement dictates the requirements for the installation of valves and does not impose an ongoing inspection and maintenance requirement.

With respect to installation requirements, the state provision modifies the federal provision in two ways: (1) the state regulation requires the installation of an underground curb shut off located in proximity to the property line for all high pressure and intermediate pressure lines,<sup>9</sup> as opposed to a “shut-off valve in a readily accessible location, that, if feasible, is outside the building,” as required by the federal regulation, and (2) the state regulation requires an outside shut off in buildings of general assembly regardless of the service size, which is also not required by federal regulation. The state regulation does not require the installation of an underground curb shutoff (or any other valve) on a “low pressure” service line unless the service line is 2” or larger in

---

<sup>9</sup> A “high pressure” distribution system is defined by Department regulations as a “system in which the pressure in the main is greater than 60 psig but equal to or less than 200 psig.” *Id.* at § 101.06(3). An “intermediate pressure” system is one where the gas pressure in the main is greater than two psig but equal to or less than 60 psig. *Id.* at § 101.06(2).

diameter. The types of service lines generally used for single family homes are ¾" to 1" plastic, low-pressure service lines, and therefore, no underground valve is required under state or federal law on these lines.

Significantly, the state regulation states that curb valves should be "readily identifiable and available for easy access," but does not use either the term "readily accessible," as used in Section 192.181 or "easily and immediately accessible," as used in Section 116B. The state regulation has been in effect at least since the early 1970's and, prior to the enactment of Section 116B, there was no indication from the Pipeline Division that the regulation imposed an ongoing inspection and maintenance requirement relating to underground curb valves.<sup>10</sup> To the knowledge of the Gas Operators, the Pipeline Division has never issued a Notice of Probable Violation relating to the alleged "inaccessibility" of a curb valve under 220 C.M.R. 101.06(14), nor has the Pipeline Division ever taken issue with the lack of a curb-valve inspection and maintenance procedure within the O&M procedures of the Gas Operators.

#### **D. Summary of Legal Requirements Governing Valve Accessibility**

Taking the various state and federal requirements as a whole, the legal framework that exists today is as follows:

- *At the time of installation*, each *key valve* on a distribution main must be in a "readily accessible location" (§ 192.181(c)(1));
- Each *key valve* must be inspected and maintained at intervals not exceeding 15 months, but at least once each calendar year (§ 192.747(a));
- *At the time of installation*, each service line must have a shut-off valve in a "readily accessible location," that, if feasible, is outside the building (§192.365(b));

---

<sup>10</sup> The first formal indication of this concept is encompassed in the September 18, 2003 Letter to the Operators Regarding Underground Service Line Valves.

- *At the time of installation*, each underground valve installed on a service line must be covered in a durable box or standpipe that allows ready operation of the valve (§ 192.365(c));
- *At the time of installation*, each intermediate or high pressure service line must be equipped with an underground curb shut off at the property line, which is readily identifiable and available for easy access (220 C.M.R. §101.06 (14)(a));<sup>11</sup> and
- *At the time the commonwealth or a city or town undertakes the repair* of streets, roads or sidewalks, the gas company must maintain and improve the “gate boxes” located in those streets, roads or sidewalks so that the gate boxes are more easily and immediately accessible (Section 116B).

Accordingly, under the existing regulatory framework, gas operators have an obligation: (1) to install key distribution valves to be readily accessible; (2) to install on curb-valve boxes on service lines to be readily identifiable and available for easy access; (3) following installation, to inspect and maintain designated “key valves” on distribution mains on an annual basis to ensure that they are “readily accessible,” and (4) when a municipality is undertaking the repair of streets, roadways and/or sidewalks, to perform maintenance on the valve boxes affected by that repair project to ensure, at that time, that any affected gate boxes are raised so that they are easily and immediately accessible. All of these requirements are encompassed within the O&M procedures or policies of the Gas Operators and are complied with in the normal course of business.

Significantly, there is no state or federal requirement that mandates: (1) that operators perform a periodic inspection and maintenance program for valve boxes that were previously installed by the gas operator and are not designated as a “key valve,” or (2) that operators identify and remove paving on their own motion in instances where

---

<sup>11</sup> The state regulation (220 CMR 101.06(14)) also requires curb valves to be installed on service lines with a diameter of 2” or greater or service lines supplying a theatre, church, factory or other buildings where large numbers of persons assemble, regardless of the size of the service line.

paving has occurred without the operator's knowledge and/or there is no current state or municipal paving project planned. Therefore, if the Department were to define "gate boxes" as any distribution main valve or curb valve and then to require operators to ensure that those gate boxes are "easily and immediately accessible" at all times (i.e., whether or not the operator has had a reasonable opportunity to participate in a planned municipal paving project), the Department's requirement would go well beyond the legal framework and current practice of the Gas Operators. This expansion of the current framework would require careful evaluation and balancing of the relevant considerations, as well as company-specific assessments of the appropriate scope, timetable and cost of implementation.

### **III. DISCUSSION**

The Department states in its NOI that the purpose of this investigation is to "establish standards by which operators comply with the Section 116B mandates" and that the investigation will "seek a showing on the part of operators that issues of gate box maintenance and improvement are properly addressed" (NOI at 3). Under current law and regulation, issues regarding gate-box maintenance and improvement are properly addressed through the combination of (1) state and federal installation requirements, and (2) Section 116B requirements to utilize municipal paving opportunities to raise gate boxes in order to maintain their accessibility.

Thus, the Department's focus in this proceeding should be the establishment of standards delineating operator compliance with Section 116B so that the obligations of operators regarding the accessibility of gate boxes following initial installation are clear. Although the Department does not have jurisdiction over state and municipal entities

controlling public paving projects or private paving contractors, this effort would assist in clarifying and highlighting the shared responsibility that these entities have in relation to maintaining gate-box accessibility, and would also emphasize the importance of close coordination between operators and state and local paving authorities. To that end, there are three specific issues that the Gas Operators address below: (a) the Department's interpretation of the terms "gate box" and "easily and immediately accessible" in relation to Section 116B; (b) practical constraints inherent in coordination with state and municipal paving authorities; and (c) cost implications of Section 116B compliance and expanded obligations.

**A. Interpretation of Section 116B Terms**

In the NOI, the Department reviews its previous interpretations of the terms "gate box" and "easily and immediately accessible," and focuses on these terms as a determining factor regarding Section 116B compliance (NOI at 2-3). From the perspective of the Gas Operators, the debate does not hinge on the need to establish common definitions for these terms, but rather, depends upon the Department's determination as to the obligation of an operator to ensure that all "gate boxes" are "easily and immediately accessible," even in instances where a municipality has completed a paving project without notice to the operator. If set within the context of Section 116B (i.e., a known municipal paving project), the Gas Operators are in agreement that the term "gate box" would refer to any valve box affected by the municipal paving project and that the term "easily and immediately accessible" would require that the affected gate boxes be raised to accommodate the new paving.

However, the Gas Operators do not support an interpretation that "easily and

immediately accessible” imposes an obligation to raise gate boxes outside of the context of a municipal paving project and/or to correct for actions taken by the Commonwealth, a municipality or any other entity that has encroached upon the operator’s facilities without notice to the operator. To the extent that the Department, or commenters in this proceeding, would advocate for such an approach, the definition of these terms becomes more important because a sweeping interpretation will represent a deviation from federal and state safety regulations and a substantial change in practice, with potentially huge cost ramifications.

For example, with respect to the definition of the term “gate box,” the Department has alternatively implied that a “gate box” is a “distribution valve” consistent with Section 192.181 (see NOI at 2; Letter to Gas Operators Regarding Distribution Line Valves dated September 18, 2003 at 1-2), and that the term “gate box” includes both distribution valves and curb valves consistent with Section 192.181 and 220 CMR 101.06(14) (see NOI at 3-4; Letter to Gas Operators Regarding Distribution Line Valves dated October 3, 2005, at 1). Because the Gas Operators inspect and maintain all valves affected by a municipal paving project, the distinction between a distribution main valve and a curb valve is not a factor in determining compliance with Section 116B. However, if the Department were to impose a new obligation beyond Section 116B, requiring operators to uncover valve boxes that have been paved over unbeknownst to the operator and/or are not part of a new municipal paving project, the operators would be faced with a substantial challenge. As a result, each operator would need to evaluate the nature, use and status of valve boxes on its system and would likely need to propose a company-specific implementation plan that would allow for compliance on

a prioritized basis based on the specific use of valves on that system.

With respect to the definition of the “easily and immediately accessible,” the Department has stated that “distribution valves used for emergency purposes must be accessible without having to remove paving material” (NOI at 2). However, this assertion is not supported by state or federal law. Specifically, there is no state regulation pertaining to the installation or maintenance of distribution valves other than valves designated as “key valves.” The federal regulation (Section 192.181) pertains only to the installation of key valves, which are currently inspected and maintained on an annual basis by all operators to verify that none of these valves are paved over. Lastly, Section 116B requires a valve box to be made easily and immediately accessible only in the context of a state or municipal paving project. Therefore, the question is not whether a standardized definition of “gate box” or “easily and immediately accessible” exists among the Gas Operators (it does), the question is whether there is an obligation to make non-key distribution valves and curb valves easily and immediately accessible outside of the context of Section 116B compliance. The current legal structure and industry practice do not impose this obligation.

In particular, the Pipeline Division relies on Section 192.181 of the federal pipeline safety regulations to interpret terms used in Section 116B. For example, in its Letter to Gas Operators Regarding Distribution Lines Valves (October 3, 2005), the Department states that the 1973 OPS Opinion Letter on Section 192.181 “emphasizes that *distribution valves* used for emergency purposes must be accessible without having to remove paving material” (at page 2). From this point, the Department concludes that “[a] valve must be visible without having to remove any paving, and accessible without

consulting records or maps indicating its location” (id.) (emphasis added). Later, the letter states “to ensure the accessibility of *valve boxes* , it is essential that . . . .”(id.) (emphasis added).

However, as discussed in detail above, Section 192.181 applies exclusively to “*key valves*,” which are specifically designated by the operator and inspected and maintained on an annual basis under Section 192.747 to ensure that the valves are readily accessible. Section 192.181 does not apply generally to “distribution valves,” as first referenced by the Department and in no way applies to *all valves* as indicated by the Department in the second reference. This point is confirmed by OPS in its advisory rulings. The Gas Operators maintain rigorous and comprehensive programs to ensure that key valves are designated, inspected and maintained (on an annual basis) to ensure that they are readily accessible in the event of an emergency. Therefore, the accessibility requirements of Section 192.181 (and 192.747, which is the maintenance requirement for key valves) do not establish that *all valves* on a distribution main or on a service line must be “easily and immediately accessible.” Moreover, an operator is able to ensure that its gate boxes remain easily and immediately accessible as a result of a municipal paving project only in the event that it is aware of that project.

Accordingly, in this proceeding, the Department should confirm that the term “gate box” refers to: (1) any valve box; (2) affected by a repair or paving project; (3) undertaken by the Commonwealth or a city or town. In addition, the Department should confirm that operators have an obligation under Section 116B to raise “gate boxes” (as the defined term) so that they remain “easily and immediately accessible,” whenever the operator is provided with reasonable notice of a planned paving project, proceeding on

a definitive schedule.

## **B. Municipal Coordination**

As stated above, the Gas Operators comply with Section 116B by (1) correctly installing distribution main valves and curb valves consistent with state and federal regulation; and (2) working to identify subsequent state and municipal paving projects so that they can ensure that the installed valve boxes remain “easily and immediately accessible.” Therefore, from the perspective of the Gas Operators, communication between the Gas Operators and the proponents of state and municipal paving projects remains the key to compliance with Section 116B. However, there are certain practical constraints that must be acknowledged in considering a structure for promoting the cooperation of state and municipal paving authorities in Section 116B compliance.

For example, the process employed by the Commonwealth and its cities and towns to plan and complete paving projects is extremely fluid and unpredictable. In many cases (but not all), these entities develop a preliminary plan early in the year roughly identifying the streets on which repairs will be made. Even if the operator is able to obtain this list (and many times it is not), the preliminary plan is subject to dramatic change throughout the year as the municipality struggles with any number of challenges, such as contractor availability, unanticipated circumstances causing project delays, weather conditions, politics and, above all else, the availability of funds. In this context, it is completely unrealistic to expect that the Commonwealth or a municipality will provide notification to an operator on a consistent and complete basis.

Therefore, to try to overcome this problem, all of the Gas Operators maintain active relationships with cities and towns in their service territories. However, there are

vast differences among the municipalities in terms of their available resources, personnel capabilities and sensitivity to utility infrastructure considerations. Therefore, even in those municipalities where the Gas Operators are able to interact with capable and conscientious representatives, there can be difficulties in anticipating and receiving notice of pending paving projects. In addition, in recent years, municipalities have transitioned to a “grind and inlay” process to pave public streets and roads, which is a much faster (and less expensive) technique for repaving roads than the traditional road reconstruction undertaken in the past. In turn, paving companies working under contract with the cities and towns operate under their own cost constraints and generally will not incur any additional cost to coordinate or accommodate a gas operator. This, along with all other factors, results in a project schedule that is erratic, highly subject to change and extremely difficult to track and confirm.

The crux of Section 116B is the concept that municipal street and sidewalk repair projects (1) pose a threat to the accessibility of installed gate boxes, and (2) provide the ideal opportunity for valve box inspection and maintenance because it is a time when improvements can be made without incremental environmental impacts, disruption and inconvenience to the municipalities and the residents therein, and on a cost-effective basis. This approach also recognizes the reality that, at any time following the installation of a valve box, third-party encroachment may occur despite all possible efforts of the operator. Given the huge number of valve boxes present on any given distribution system, there is no way for the operator to ensure against all forms of encroachment or obstruction (e.g., paving, landscaping and the presence of obstructions such as snow, ice, dumpsters, motor vehicles, sheds and other large

items) and at all times. Thus, state or municipal paving projects provide a rational and cost-effective platform for inspection and maintenance efforts.

At the same time, neither Section 116B (nor any other provision of state or federal law) contains a requirement for operator notification of a state or municipal paving project by the project manager, nor does it impose any prohibition or penalty on project managers, paving contractors or any other entity that encroaches upon or damages operator facilities. Moreover, the Department has no jurisdiction over paving projects undertaken by the Commonwealth and its municipalities, nor does the Department have jurisdiction to impose communication requirements on those entities under Section 116B. Accordingly, it is not reasonable to hold an operator strictly accountable for the lack of accessibility of a particular gate box when (1) the operator has installed the gate box in accordance with state and federal law; and (2) a third-party has paved over the gate box or is responsible for some other obstruction that prevents its access either without the knowledge of the operator, or with such inadequate notice that the operator is unable to take action.

Accordingly, the central issue in this proceeding is whether the Department is: (1) seeking to establish standardized practices to facilitate consistent statewide compliance with Section 116B, or (2) seeking to have the Gas Operators ensure immediate access to any "gate box" on their respective systems regardless of whether an opportunity to protect this equipment was made available through a state or municipal paving project. If the Department is seeking to establish standardized practices to facilitate statewide compliance with Section 116B, the Gas Operators believe that the adoption of consistent, standardized communications protocols would

assist in achieving the Department's objectives. To that end, the Gas Operators have included recommendations for standardized communications protocols with governmental officials in Section V.

Alternatively, if Department is seeking define the term "gate box" to include all distribution valves and curb valves and to impose the obligation on operators to ensure that all gate boxes are "easily and immediately accessible," at all times, the Department will need to establish that requirement pursuant its authority under G.L. c. 164, §105A (since Section 116B relates exclusively to current paving projects). In addition, the Department would need to provide the operators with an opportunity to prepare a company-specific implementation and cost recovery plan because this requirement would go well beyond current practice and would involve company-specific considerations of scope, applicability, resource allocation and prioritization of work requirements.

### **C. Cost Implications of Section 116B Compliance and Expanded Obligations**

Section 116B allows that operators may "apply for funds" under G.L. c. 90 ("Chapter 90 Funds") to assist in paying the costs of the maintenance and improvement required to comply with Section 116B. Chapter 90 Funds are appropriated by the Legislature annually and distributed by the state to municipalities for their use in transportation projects. However, in enacting Section 116B, the Legislature failed to establish any process, system or legal recourse for the gas operators to seek reimbursement for the significant costs that they expend to raise gate boxes to accommodate municipal paving projects. Moreover, funds that are allocated to cities

and towns under Chapter 90 are fully committed for paving projects within those municipalities and there is virtually no possibility that any given city or town will allocate a portion of those funds to the gas operator for gate box improvements. In fact, municipalities have resisted direct requests by certain Gas Operators to be reimbursed from Chapter 90 funds. See, e.g., D.T.E. 06-48, Town of Canton Comments (June 29, 2006). This means that the Gas Operators comply with Section 116B *entirely at their own cost*, despite the fact that the work is required to accommodate paving projects undertaken at the sole discretion and benefit of the state or municipality. Accordingly, any expansion of the requirement beyond Section 116B that would require the Gas Operators to excavate gate boxes that were properly installed but then paved over unbeknownst to the operator, would impose significant costs on the operator systems, which are incremental to the substantial cost that is already being incurred to comply with the requirements of Section 116B.

In addition, the Department must consider the strong reluctance of state and local authorities to allow newly paved public roads to be re-opened by an operator in the event that gate boxes were paved over without proper notice to the operator. The Department has recognized the constitutional and statutory rights of municipalities over their public ways. Investigation of the Department of Telecommunications and Energy Re: Street Restoration, D.T.E. 98-22 (Street Restoration Standards at § 1.2). Most, if not all, municipalities impose a 5-year moratorium on the excavation of newly paved streets, which means that municipalities would likely seek to have the operator reconstruct the street using curb-to-curb paving in the event that the operator were to: (1) discover the improper paving over of its valve boxes; and (2) excavate those valve

boxes during the moratorium (and outside of the context of a municipal paving project). This practice is very expensive and would greatly increase the cost of complying with a new requirement by the Department to ensure the accessibility of all gate boxes at all times.

Lastly, the Department should consider the differences in the service territories served by the Gas Operators before imposing a new requirement. As the Department is aware, the Gas Operators serve different types of service territories within the Commonwealth, from exclusively rural areas to predominantly urban areas. Accordingly, efforts to increase gate box accessibility will be affected by several factors, including whether the affected public ways are heavily or lightly traveled or utilized primarily for commercial or residential use. These factors will have a direct impact on the cost of complying with new Department directives regarding gate box accessibility. Therefore, to the extent that the Department determines that operators must ensure the accessibility of gate boxes at all times, it should allow each operator to propose and implement a company-specific plan and schedule for doing so.

#### **IV. REPLY TO COMMENTS**

The Attorney General, NEGWA, and the Towns of Canton and Concord submitted comments to the Department in this proceeding. The Gas Operators respond to each set of comments below.

##### **A. Attorney General Comments**

The Attorney General Comments consisted primarily of the presentation of a report performed by an independent consultant who: (1) reviewed the Gas Operator's responses to the Department's NOI; (2) referenced relevant federal regulations; (3)

presented the results of surveys of other states with gate-box accessibility policies; and (4) made recommendations aimed at improving compliance with the Department's gate box accessibility policies (Attorney General Comments, Energy Advisors, LLC Report at 6-9). In general, the Attorney General has presented a thoughtful analysis and constructive recommendations relating to the gate-box issue. However, as indicated in the discussion above, some of the Attorney General's recommendations represent a substantial broadening of the current regulatory framework and will come at a substantial cost. The response of the Gas Operators to the Attorney General's specific recommendations are as follows:

- **Expand the Department's definition of "gate boxes" to include any distribution main or service line valve in a box that may be useful in an emergency.**

Any valve installed on a distribution main or service line may be considered "useful" in an emergency to isolate main segments or individual services. However, many valves are installed on the system, not to fulfill a requirement with state or federal law, but because, in the operator's discretion, a valve is useful for future construction purposes or to facilitate routine maintenance. Therefore, establishing a compliance trigger of any valve "that may be useful in an emergency" is inappropriately broad and would create substantial compliance issues since all valves would have to be treated with equal priority and attention despite their differing operational purpose.

In current practice, when valve boxes are raised in conjunction with roadway paving pursuant to Section 116B, all valve boxes within the scope of the paving project are addressed, including those located on gas transmission lines. No distinction is made among critical valves, other main valves or valves on services of any size, pressure or customer served. Because the focus of this inquiry is compliance with Section 116B, and given that the Gas Operators raise all types of valve boxes affected by paving projects, the designation of "useful in an emergency," is neither relevant nor appropriate.

- **Expand the operator annual valve inspection requirements to include all valves defined as gate boxes.**

The federal regulations (Section 192.181 and Section 192.747) require annual inspections of "key valves" and these requirements are strictly adhered to by the

Gas Operators. There is no other state or federal requirement that mandates valve inspections on any periodic basis, nor that would provide a basis for a determination by the Department that annual valve inspections are necessary or advisable. In fact, the focus of the Department's investigation in this proceeding is compliance with Section 116B, which does not require valve inspections.

Moreover, the Attorney General's recommendation to establish an inspection and maintenance program that would require annual inspections of all valve boxes located on a distribution main or service line and "useful" in an emergency would generate huge costs for Massachusetts customers. By way of an order of magnitude, the Gas Operators estimate that this type of approach could cost in the range of \$150 million to \$200 million on a statewide basis given the vast number of valves that would be involved and the resources that would be required to maintain this schedule and approach.

- **Establish Commonwealth-wide standards for the identification of gate boxes.**

There is a de facto "standard" in place currently for gate/valve box identification. Manufacturers of valve boxes used in the industry generally have a cover that has "Gas" or "G" cast into it, and some operators require that designation in their material standards for curb boxes (and roadway boxes). Accordingly, there is no need for the Department to establish "Commonwealth-wide standards" for identification of gate/valve boxes.

- **Expand the standard of "easily and immediately accessible" for gate boxes to prohibit any obstruction, such as dumpsters or other obstructions, from blocking quick access to valve boxes.**

Enforcement of a standard that prohibits "any obstruction" from blocking gate boxes will be virtually impossible to accomplish. Even if an annual inspection requirement for all gate boxes is implemented, a gate box could be rendered inaccessible shortly after it is inspected. Operators cannot reasonably (or economically) be expected to monitor accessibility that could be affected by day-to-day activity.

- **Define the Commonwealth's and local government's responsibilities in communicating paving plans with gas operators.**

Adoption of this recommendation would best enhance compliance with Section 116B. Clearly defining communication requirements would improve the workload planning process for operators to ensure gate boxes have been raised before paving. Operators should be notified both well in advance of any proposed paving project, but also in a reasonable timeframe immediately before the paving project is to commence because gate boxes must generally be raised concurrently or only shortly before paving occurs. Municipal response to the Gas

Operators' annual requests for information about paving projects is not always offered in a cooperative and knowledgeable manner.

- **Prohibit paving contractors from paving over gate boxes under threat of penalties from the Department or legal action by the operators.**

Adoption of this recommendation would be beneficial if it could be accomplished. If combined with a minimum notification timeframe, it could reduce or even eliminate the lack of notice and late notice that are the most common causes of gate boxes being paved over. Contractors that pave over operator gate boxes are damaging the operators' distribution systems. Accordingly, a Department policy that included possible penalties on contractors that damage a distribution system may inhibit the practice by contractors. The Gas Operators recognize that the Department may need to seek a statutory change to grant it authority to impose penalties on private parties that damage distribution systems.

- **Require paving contractors to use the one call system to allow operators to mark out gate boxes being affected before paving if they have not already been raised before the paving project begins.**

The idea of using a "one-call system" to notify operators of paving activities is conceptually appealing. However, it may not be practical to use the Massachusetts one-call system (Dig-Safe) for this purpose. As noted previously, neither Part 192 nor state law explicitly includes paving within the definition of an "excavation," which is the trigger for contractor compliance with the Massachusetts "one-call system". Accordingly, it is likely that the Department would need to seek a statutory change of G.L. c. 82, § 40 (the Massachusetts Dig-Safe Statute definitions) in order to clearly require paving contractors to comply with Dig-Safe. In addition, the current requirement of Dig-Safe for a 72-hour notification by contractors before excavation commences would likely not allow an operator sufficient time to maintain its gate boxes as part of a paving project. An operator may have commitments scheduled in other communities that would inhibit its ability to address a paving project that has brought to the operator's attention on such short notice. However, a one-call notification that would ensure adequate notice for paving projects could be considered.

- **Expand the Department's authority to include the imposition of meaningful penalties for operator violations of Section 116B and paving crew violations of new one-call requirements for overlays.**

Section 116B does not provide the Department with authority to impose penalties for non-compliance on either the operators or paving crews, outside of the penalty authority it has under the Dig-Safe statute, which is limited under Dig-Safe to "excavation activities." Implementation of this proposal would likely require a legislative change.

- **Encourage compliance with Section 116B by sponsoring training and waiving the first penalty if the perpetrator attends remedial training.**

Department-sponsored training could promote awareness and compliance with Section 116B and reduce the number of paved-over boxes. However, it is unclear whether the Department has authority to compel attendance by municipal officials and contractors at a Section 116B compliance training session.

- **Require operators to file annual reports identifying paved-over gate boxes.**

The Gas Operators comply with the provisions of Section 116B by raising gate boxes that are affected by a state or municipal paving project at the time that project is undertaken by the municipality. If an operator is not aware of a paving project, gate boxes may be paved over without the knowledge of the operator. This makes it difficult for the operator to track and report on paved-over gate boxes.

## **B. NEGWA Comments**

NEGWA first references the two requirements discussed above relating to the installation of valve boxes on service lines (Section 192.365 under federal law and 220 CMR 101.06(14) under state law) and contends that the Gas Operators are not in compliance with these requirements. To support this contention, NEGWA implies that the 1973 OPS Opinion Letter, *which relates exclusively to an interpretation of Section 192.181 and the installation of **distribution main valves***, somehow establishes a requirement regarding the accessibility of curb valves. This is not accurate, nor has the Department made such a suggestion. In fact, the Department explicitly noted in its Letter to the Operators Regarding Underground Service Line Valves (dated September 18, 2003), that an OPS Opinion Letter dated August 1, 2000, found **no** obligation to establish a maintenance program to ensure service line accessibility (at page 2). In addition, the Department stated that each operator is required, under 220 CMR 101.06(14) to have **a means to locate** an underground service line valve, when needed. The Gas Operators have provided information to the Department in this

proceeding, as well as a filing made on October 12, 2004, indicating that curb valves are “readily identifiable and available for easy access,” as required by 220 CMR 101.06(14).

In terms of the federal requirement relating to distribution main valves, NEGWA states that an example of “full compliance” is the annual inspection and maintenance of “primary valves [on the KeySpan system]” under Section 192.747. As discussed above, Section 192.747 is the “maintenance” requirement for distribution valves installed under Section 192.181. All of the Gas Operators comply with the installation and maintenance requirements associated with “key valves” and follow O&M procedures requiring the annual inspection and maintenance of this equipment.

Lastly, NEGWA argues that compliance with Section 116B is not sufficient to enforce compliance with “all of the above mentioned regulations” (NEGWA at 4). However, no existing state or federal law or regulation (or even industry practice) requires the operators to ensure that all non-key distribution valves and curb valves are “easily and immediately accessible,” at all times. In fact, NEGWA explicitly recognizes that this approach would require a comprehensive effort and substantial cost beyond what is required by Section 116B. Accordingly, if the Department’s objective is to ensure compliance with Section 116B, the Gas Operators have demonstrated that they are satisfying this standard.

### **C. Canton and Concord Comments**

#### **1. Canton Comments**

The Canton Comments opposed the “idea that anyone other than the utility companies should be responsible for paying for adjustments of their own utilities and

appurtenances in any public way” and stated further that, “[t]he State, nor the Cities and Towns of the Commonwealth of Massachusetts, should not contribute Chapter 90 funding towards the repair and maintenance of the a utility company’s neglected work.” (Canton Comments at 1). However, as noted previously, Section 116B allows operators to seek Chapter 90 Funds to pay the costs for maintenance and improvements to gate boxes. As evidenced by the Canton Comments, municipalities have refused to allow their Chapter 90 funds to be further distributed to operators that have sought the funds as reimbursement for costs incurred to make gate boxes accessible. Operators will continue to issue invoices to municipalities for Chapter 90 funds as contemplated by Section 116B. However, the Department should recognize that neither the Gas Operators nor the Department has jurisdiction to force the municipalities to reimburse an operator for costs incurred to comply with Section 116B. Accordingly, if the Department determines that an expansion of Section 116B is warranted, it should provide an opportunity for the Gas Operators to submit cost recovery proposals to cover the costs of implementing a broad new mandate.

## 2. Concord Comments

The Concord Comments specifically address the municipality’s perspective on its relationship with KeySpan Energy Delivery, and references issues that are beyond the scope of Section 116B (Concord Comments at 1-2). However, the comments allude to the point offered by the Gas Operators that improved communications between municipalities and operators will facilitate compliance with Section 116B, as well as other public safety related regulations. To that end, the Gas Operators recommend that

the Department adopt their proposed Standards for Compliance with Section 116B, as noted below.

## **V. PROPOSED STANDARD FOR SECTION 116B COMPLIANCE**

The key to enhancing compliance with Section 116B is cooperation and communication between governmental entities and the Gas Operators so that adequate notice of confirmed paving projects is provided to the Gas Operators. To that end, the Gas Operators have compiled a set of standards delineating Section 116B compliance by operators, including uniform communication protocols. These proposed standards are as follows:

### **SECTION**

- 1.0 Purpose and Scope
- 2.0 Definitions
- 3.0 Protocol for Gate Box Accessibility
- 4.0 Governmental Agency Communications Protocol

#### **1.0 Purpose and Scope**

- 1.1 The purpose of these standards is to delineate an Operator's obligations relating to compliance with G.L. c. 164, § 116B, which is to: (1) perform maintenance and improvements of its gate boxes located in the streets, roads or sidewalks to be repaired by a Governmental Agency; (2) at the time that the Governmental Agency undertakes the repair of those streets, roads or sidewalks; (3) so that its Gate Boxes are more easily and immediately accessible.
- 1.2 Nothing in these standards may be construed to restrict the constitutional or statutory authority of the Governmental Agency with respect to Public Ways under its control. Nothing in these standards is intended to prevent an Operator and a Governmental Agency from mutually agreeing to exceptions to these standards.

- 1.3 Nothing in these standards is intended to be inconsistent with any ordinance or by-law and the Constitution and laws of the Commonwealth.
- 1.4 Nothing in these standards is intended to be inconsistent with the Department's regulations concerning compliance with the minimum federal safety standards applicable to natural gas pipelines as promulgated in 220 C.M.R. § 101.00 et seq.

## **2.0 Definitions**

"Commonwealth" means the Commonwealth of Massachusetts.

"Confirmed Project" refers to a project that will be undertaken by a Governmental Agency on a Public Way and that is definitive in terms of (a) the specific location to be repaired; and (b) the time frame of the repair, as evidenced by either (i) a specific date reference if the project is to be completed by employees of the Governmental Agency, or (ii) the execution of a contract with an independent paving contractor if the project is to be completed by an outside contractor.

"Department" means the Department of Telecommunications and Energy.

"Gate Box" refers to a structure that (a) allows access to any valve on an Operator's distribution pipeline system; and (b) would be affected by a Confirmed Project on a Public Way that is undertaken by a Governmental Agency.

"Governmental Agency" means any political subdivision of the Commonwealth, including a Municipality.

"Municipality" means a city or town of the Commonwealth.

"Operator" means a gas company as defined in Section 1 of G.L. c. 164 or a municipal gas department established pursuant the provisions of G.L. c. 164.

"Preliminary Project List" refers to a listing of Public Ways provided by the Governmental Agency to the Operator, which provides information as to potential or tentative plans for future projects.

"Public Way" means a street, roadway or sidewalk within the control of a Governmental Agency.

## **3.0 Protocol for Gate Box Accessibility**

- 3.1 Upon adequate notification to an Operator by a Governmental Agency of a Confirmed Project involving the repair and/or paving of a Public Way, the Operator shall arrange for appropriate personnel to maintain and raise any gate

box that is located in the Public Way and affected by the Confirmed Project, so that the Gate Box is easily and immediately accessible. Such notification shall be deemed adequate based on the consideration of relevant factors including without limitation, the size and scope of the Confirmed Project, its location and the time of year construction is planned.

- 3.2 The Operator shall document the number and locations of gate boxes raised or otherwise repaired by the Operator in accordance with Section 3.1 of the Standards.
- 3.3 If and when an instance of inadequate notification or subsequent damage to a Gate Box(es) comes to the attention of the Operator, the instance shall be documented by the Operator, and at the appropriate interval, brought to the attention of the responsible Government Agency. Records of such occurrences shall be maintained by the Operator.

#### **4.0 Communication Protocol With Governmental Agencies**

- 4.1 Prior to the commencement of the construction season each year, the Operator shall formally request in writing a Preliminary Project List for Public Way reconstruction and/or resurfacing for each Governmental Agency in the service territory.
- 4.2 Operators shall be required to maintain a current list of Government Agency contacts in the Operator's service territory who are responsible for the maintenance of Public Ways.
- 4.3 The annual request from the Operator shall be mailed via First Class mail or delivered to the appropriate Government Agency representative and responses will be compiled by the Operator for purposes of facilitating follow-up communication by the Operator's Government Agency representative, if necessary.
- 4.4 The Operator shall establish and maintain a liason with the appropriate Government Agency representative in order to facilitate communications between the Operator and the Government Agency.
- 4.5 The Operator will make every reasonable effort to attend preconstruction meetings scheduled by Government Agencies of which the Operator is notified, or otherwise maintain ongoing contact with the Governmental Agencies in the Operator's service territory that are responsible for the maintenance of Public Ways.
- 4.6 The Operator's adherence to the communication protocol may be weighed as a factor in determining whether the Operator has met its responsibility to maintain

the accessibility of any Gate Box in a public way that is affected by a municipal paving project.

## VI. RECOMMENDATIONS OF THE GAS OPERATORS

The foregoing analysis and discussion demonstrates that the Gas Operators comply with all state and federal safety requirements for the installation and maintenance of valves and valve boxes on distribution mains and service lines. In accordance with those requirements, underground valve boxes are accessible at the time of installation. Following installation, the Gas Operators protect the accessibility of their valve boxes by raising any valve boxes affected by municipal paving projects when they have been afforded a reasonable opportunity to participate in those projects, as required by Section 116B. To attempt to ensure participation, the Gas Operators actively solicit information on planned municipal paving projects and cultivate working relationships with communities located within their service territories in order to identify and plan for upcoming municipal paving projects. The enactment of Section 116B did not create a new requirement or expand an operator's obligations to ensure that gate boxes are easily and immediately accessible outside of the context of a municipal paving project or in the event that it is not provided with a reasonable opportunity to participate in a municipal paving project.

Therefore, based on the foregoing analysis, the Gas Operators recommend that the Department take the following actions in this proceeding:

- The Department should confirm that the state and federal regulations establishing the requirements for the design and installation of distribution main valves and curb valves govern the accessibility of those valves at the time of installation.
- The Department should confirm that, following installation, operators should adhere to the requirements of Section 116B, by (1) performing maintenance and improvements of gate boxes *located in the streets, roads or sidewalks to be repaired*; (2) *at the time* that the commonwealth or a city or town undertakes the repair of those streets, roads or sidewalks; (3) *so that* the gate boxes are more easily and immediately accessible.

- The Department should require operators to incorporate the standards proposed herein for compliance with Section 116B into their Operations and Maintenance Manuals. Under these standards, an operator shall be obligated to maintain close coordination with state and municipal paving authorities using an established protocol. In addition, the operator will be responsible for maintaining the accessibility of any “gate box” in a public way that is affected by a municipal paving project, so long as the operator has received adequate notice of the project and has followed the communication protocol.
- The Department should reject any proposal to create a new program or obligation requiring the inspection and/or maintenance of distribution main valves (other than key valves) or curb valves outside of the context of a municipal paving project, as defined in the proposed standards for compliance with Section 116B.
- To the extent that the Department determines it necessary or advisable to direct the Gas Operators to initiate a program to inspect and/or maintain gate boxes outside of the context of a municipal paving project, the Department should conduct company-specific examinations of the appropriate implementation scope and schedule and provide the opportunity for the operator to propose a plan for cost-recovery.